

Luke Messer RECEIVED
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July 28, 2017

OFFICE OF GENERAL
COUNSEL

Federal Election Commission
Office of Complaints Examination
And Legal Administration
Attn: Christal Dennis, Paralegal
99 E Street, NW
Washington, DC 20463

RE: MUR 7263

Dear Ms. Dennis:

Please be advised that, as Treasurer of the Luke Messer For Congress committee, I received correspondence from Mr. Jeff S. Jordan about the above-referenced matter on 7/17, 2017. Thank you for the opportunity to respond and thank you in advance for your prompt consideration of this matter.

By way of update, Rep. Messer announced his intention to run for the U.S. Senate. See attached press release from July 26, 2017. Nevertheless, I feel that a response to the Complaint is warranted because the allegations are so outlandish.

In its Complaint, the American Democracy Legal Fund ("Complainant") alleges that "Rep. Messer has moved beyond 'testing the waters' for a possible run for United States Senate to become a 'candidate' under the Act and violated the candidate registration and reporting requirements of the Act" (page 1) and that "Rep. Messer is without a doubt a candidate for the United States Senate" (page 4). These legal allegations are wholly without merit and should be dismissed regardless of Rep. Messer's current intention to be a candidate for the U.S. Senate.

Notwithstanding the Complainant's self-professed mind-reading skills (and the invitation for this Commission to do likewise), Rep. Messer had simply not decided whether or not to run for the U.S. Senate at the time these allegations were made. He had not informed me of his decision and, to the best of my knowledge, had not so informed any of his staff. He was simply still evaluating.

For its "factual" basis for the Complaint, the Complainant relies upon three (3) news articles: (1) an article in the City-County Observer entitled "Congressman Messer Announces Statewide Campaign Committee" (cited in footnote 1 and hereinafter referred to as the "Finance Committee" article), (2) a USA Today article entitled "Is the VP's Brother Looking to Throw his Hat into the Political Ring" (cited in footnote 1 and

hereinafter referred to as the "Greg Pence" article), and (3) a Journal Gazette article entitled "Messer Campaign Touts Fundraising Total" (cited in footnote 5 and hereinafter referred to as the "Fundraising" article).

Based upon the Finance Committee article, Complainant would have the FEC believe that merely listing the names of individuals (many of whom are prior donors) who are encouraging Rep. Messer to run for the U.S. Senate somehow meant that Rep. Messer had already made his decision. He had not. While the Deputy Campaign Manager is quoted as being "enthused" by the support (as would any good campaign worker in any campaign), no one from the campaign or Rep. Messer himself is quoted as saying that Rep. Messer was, in fact, at that time running for the U.S. Senate. That is because no such decision had been made. This article provides the Complainant no basis for its conclusions.

Complainant also asserts (at page 2) that because Mr. Pence referred to his support to "elect" Rep. Messer (instead of "re-elect") then Rep. Messer somehow *must* be running for the U.S. Senate. Mr. Pence had stated quite clearly that he was raising money as a show of *his* (not Rep. Messer's) support for a run for the U.S. Senate. *Of course* Mr. Pence used the term "elect."

Complainant further suggests that because Mr. Pence did not "make his language conditional on any decision that has yet to be made" that Rep. Messer somehow *must* have already made his decision. Not only did Mr. Pence not speak for Rep. Messer on this subject, Complainant simply ignores Mr. Pence's clear statement in the Greg Pence article (submitted and relied upon by Complainant) that "right now the only thing I am focusing on is being helping Luke and Jennifer (Messer) make a big decision on whether or not they should run (for Senate)." Clearly, Mr. Pence knew full well (as should Complainant) that a decision had not been made. Notably, the Greg Pence article was published on June 8, 2017 (well after the Finance Committee article in April of 2017). And without wanting to belabor the point, another major fundraiser is also quoted in the Greg Pence article acknowledging that Rep. Messer has not yet made any decision.

Based upon the Fundraising article, Complainant jumps to further conclusions (pages 2-3) citing to the fact that Rep. Messer had a relatively good first quarter in fundraising and had \$1.6 million on hand. Apparently, Complainant is willing to adopt its conclusions based upon a news outlet opinion/speculation that Rep. Messer *must* have been running for Senate without any real analysis of its own. Not only has Rep. Messer had primary challenges in past Congressional races (contrary to the suggestion of Complainant), the uncertainty in this year's election cycle would cause any sensible candidate to increase fundraising efforts. While this amount may well be in excess of the *average* for a Congressional candidate, Rep. Messer's cash on hand was not out of line with many other Congressional candidates. This is especially true for those members of leadership (as is Rep. Messer) who are expected to support other candidates both in the state and around the country. Again, this is especially in a year of political uncertainty. While this money *could* eventually be used for a Senate run, if and when Rep. Messer

made his decision, any suggestion that there was no *other* use for the then current cash on hand is disingenuous and false.

With no real factual basis for asserting that Rep. Messer had already made up his mind to run for the Senate, Complainant proceeds to apply its speculation to various statutes, regulations and an Advisory Opinion.

While it is true that a "candidate" is "an individual who seeks nomination for election," Rep. Messer was *not* seeking nomination until his recent announcement. Similarly, Complainant's assertions regarding "testing the waters" are without merit. While Complainant declares that an individual is "*deemed*" (emphasis added) to be a candidate under certain circumstances, the word "deemed" is not found in the regulation itself. Rather, as Complainant later admits, the various categories are examples of activities that *indicate* an *intent to become* a candidate. Notably, an activity indicative of "intent to become a candidate" is not the same as an activity that "deems" an individual to *be* a candidate.

Further, Complainant falsely claims that Rep. Messer satisfied several of the examples of activities provided in the regulation. In fact, *none* apply.

First, Complainant claims that Rep Messer "used general public political advertising to publish his . . . intention to campaign for Federal office" (i.e. the U.S. Senate). Yet, Complainant has produced absolutely no advertising of any sort in which Rep. Messer declared his intention to run for the U.S Senate at that time. The articles produced merely quote *others* as supporting a run.

Second, Complainant claims that Rep. Messer had "raise[d] funds in excess of what could reasonably to be expected to be used for exploratory activities" or "under[took] activities designed to amass campaign funds that would be spent after he bec[ame]" a candidate. In support of this claim Complainant clairvoyantly declares that Rep. Messer "would not likely face a primary challenger." As referenced above, Rep. Messer has faced primary opponents in the past and the amount referenced in the Complaint is hardly out of the norm for a member of leadership running for re-election to Congress in a year of political uncertainty. Rather than perform any analysis, Complainant merely relies upon the bald speculation of a single news outlet.

And third, Complainant alleges that Rep. Messer "authorize[d] written or oral statements that refer to him" "as a candidate for a particular office." Yet again, Complainant does not cite to a single time in which *anyone*, let alone someone authorized by Rep. Messer, referred to Rep. Messer as a "candidate" for the U.S. Senate.

With respect to the Advisory Opinion cited by Complainant, it is wholly unilluminating as Complainant merely cites to factors already identified in the regulation and that are addressed above. None of Complainant's "analysis" changes the fact that none of the cited factors apply to Rep. Messer or changes the fact that Rep. Messer had, in fact, *not* made his decision until his recent announcement.

Finally, Complainant disingenuously complains of a lack of "reports of receipts and disbursements." Rep. Messer is and was *already* following all appropriate reporting of receipts and disbursements by way of his Congressional committee. Because Rep. Messer is already in compliance with the Act, there is nothing new to be seen or gained from a transparency standpoint or any of the goals of the Act. All of the receipts and disbursements are or will be there to see in black and white.

Now that Rep. Messer has declared his intentions, the campaign will proceed to file all the required paperwork and reports with this Commission to account for the recent decision by Rep. Messer to seek the nomination for the U.S. Senate.

Thank you in advance for your consideration. We look forward to the prompt dismissal of this frivolous Complaint.

Respectfully submitted,


Craig Kunkle, Treasurer
Luke Messer for Congress

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FOR IMMEDIATE RELEASE

Contact: Greg Pence
gpence@sbcglobal.net

July 26, 2017

Messer to Kickoff Senate Campaign at Annual Family BBQ

You won't want to miss the 6th Annual Messer Family BBQ, featuring Congressman Messer's official kickoff for the U.S. Senate.

"The Senate has struggled in recent weeks, and Hoosiers are tired of it. We need a proven conservative leader in the U.S. Senate to work alongside Senator Todd Young and get things done," stated Messer Statewide Finance Chairman Greg Pence.

Pence said, "Luke and Jennifer Messer look forward to a campaign focused on the issues facing working Hoosiers every day. My wife Denise and I are proud to help the Messers, and we are all grateful for the statewide outpouring of support. We hope you will join us at the family picnic on August 12th."

The event will take place at 10064 N. 300 E. Morristown, Indiana with a starting time of 1:00PM (ET).

10064 N. 300 E. MORRISTOWN, INDIANA